IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2004

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THE HON'BLE MR.JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR.JUSTICE AR. RAMALINGAM

C.M.A.NO.327 OF 1997

The Managing Director
Thanthai Periyar Transport
Corporation
Villupuram .... Appellants

-Vs-

1.G. Kuppan
2.K. Jagadeesan
3.K. Anandaraj
4.K. Suguna
5.K. Vasanthi
6.K. Gnanadas
7.K. Sankaradas
8.K. Mohanadas .... Respondents

Appeal filed under Section 173 of Motor Vehicles Act against the Judgment Decree datd 28.11.1995 and made in M.C.O.P.No.761/1993 on the file of Motor Accidents Claims Tribunal (Principal Sub Judge, Cuddalore).

!For appellant : Mr.G. Munirathinam

^For respondents 2,3 and 5: M/s Chitra Sampath T.S.
Baskaran

For respondents 1,4,6 to8 : No appearance

:JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The erstwhile Thanthai Periyar Transport Corporation, Villupuram, aggrieved by the order of the Motor Accidents Claims Tribunal , Cuddalore dated 28.11.1995 made in M.C.O.P.No.761/1993, has filed the above appeal.

2. In respect of death of one Gunavathi in a Motor vehicle accident that took place on 25.8.1993, her husband, sons and daughter preferred a claim of Rs.1,50,000/-. In support of the claim, the sixth claimant, K. Gnanadas, son of the deceased was examined as P.W.1 and one Tamilarasan, who witnessed the occurrence has been examined as P.W.2 and also marked Exs.P.1 to P.4 . On the side of the Transport Corporation, their driver was examined as R.W.1. The Motor Accidents Claim Tribunal, on consideration of the materials placed, after holding that the driver of the Transport Corporation alone was responsible, passed an award of Rs.1,10,000/- with interest at 12% from the date of petition till the date of deposit. Aggrieved by the order, the present appeal has been filed by the Transport corporation.

3. Heard the learned counsel for the appellant as well as the respondents.

4. It is brought to our notice that pending disposal of the appeal, the first respondent viz., G. Kuppan, husband of the deceased, died. Since the respondents are the children of the deceased, the above submission is hereby recorded and no further petition is required for the same.

5. The learned counsel for the appellant Transport Corporation, after pointing out the First Information Report, which has been marked as Ex.P.1 and the evidence of P.W.2, who is said to be an eyewitness to the accident, would submit that inasmuch as the deceased got down from a signal point and in that way, she fell down and sustained fatal injury, neither the driver nor the Transport Corporation is responsible for the same and the Tribunal has committed an error in not considering the said aspect. He further contended that the quantum arrived at by the Tribunal, is excessive.

6. On the other hand, the learned counsel for the respondents/ claimants would submit that the deceased was getting down in a bus stop along with P.W.2 and without noticing the same, the driver took the bus, thereby she fell down. Accordingly, the driver alone was responsible and the same was rightly found by the Tribunal. He further contended that the amount arrived at by the Tribunal is reasonable and acceptable and there is no ground for interference.

7. We have carefully considered the rival submissions and perused the judgment impugned and all other materials placed before the Tribunal.

8. Among the witnesses examined on the side of the claimants, P.W.2 is said to have witnessed the occurrence. He made a complaint to the police immediately after the accident. The said complaint has been marked as Ex.P.1. Based on the same, a case has been registered in Cr.No.718/93 on the file of Thirupapuliyur Police Station. Though it is the case of the claimants that the accident had occurred in a bus stop at Thirupapuliyur, in the complaint given by P.W.2, he specifically stated that the accident occurred at the signal point. The following statement made to the police is relevant, which reads as follows:

(Vernacular portion deleted)

9. As stated earlier, it is not in dispute that the said complaint was made by P.W.2, who is non else than eyewitness examined on the side of the claimants. It is also relevant to note the evidence of R.W.1, the driver of the corporation bus. In his evidence, he has stated that at the signal point, on seeing the red signal, he stopped the bus and after getting green signal, he proceeded further . At that time, the deceased attempted to get down from the front footboard and fell down and sustained fatal injury. No doubt, the Transport corporation has not examined their conductor, but considering the categorical statement of the eyewitness i.e., P.W.2 in Ex.P.1 and the assertion made by R.W.1 before the Court, we are of the view that the accident occurred at the signal point. Though it is claimed that the deceased while trying to get down from the bus at the bus stop, she fell down and sustained fatal injury, due to the negligent act of the driver, there is no acceptable evidence for the same. When the witness examined on the side of the claimants, viz., P.W.2 himself has stated before the police that the accident occurred at the signal point and there is no reason to disbelieve his statement.

10. Nowadays, it is the practice of passengers to get into or alight from buses even when the buses halt at signals or due to traffic congestion without knowing the consequences leading to accidents and one such case is on hand. The passengers are expected to enter into or get down from the bus only at bus-stops when the bus is in complete halt after the conductor gives consent for the same and they are not expected either to enter or alight when the bus stops at signal points. The driver while driving the bus is expected to concentrate only on road and signals and when he gets signal, it is his only concern to proceed the bus further. Needless to say, it is the duty of conductor of the bus to caution the passengers not to alight from the bus at signal points. In the instant case, it is evident that the deceased got down at the signal point, sustained injuries and lost her life. It does not mean that the deceased was solely responsible for the accident. As already observed, it is the duty of the conductor to caution the passengers not to alight from the bus at signal points and in the present case, the conductor failed in his duty. Therefore, we hold that the deceased and the crew were equally responsible for the accident fixing their responsibility at 50% each, namely, the deceased contributed to the extent of 50% and the crew contributed to the remaining extent of 50%.

11. As said earlier, there is no serious dispute regarding the quantum arrived at by the Tribunal. Even otherwise, it is seen from the evidence of P.W.1 that at the time of accident, the deceased was aged about 48 years and she was employed as Attender in a Nursery School, getting an income of Rs.1,000/-. Ex.P.4 is the salary certificate. Considering the same, the Tribunal has fixed her income as Rs.1050/and the annual income as Rs.12,600/-. From and out of the said income, it deducted 1/3 towards personal expenses and fixed her contribution at Rs.8,400/-, taking note of her age 48 years, applied proper multiplier is 13 and arrived at Rs.1,09,200/- as pecuniary loss to the family and after adding Rs.800/- towards funeral expenses, passed an award of Rs.1,10,000/-. The amount arrived at by the Tribunal is quite reasonable and

acceptable.

12. In the light of finding on negligence aspect, the compensation amount is to be reduced to the extent of 50% and the Transport Corporation is liable to pay only Rs.55,000/- with interest at 12% from the date of petition till the date of deposit.

13. The appeal is allowed in part to this extent. No costs. Consequently, the connected C.M.P is closed.

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Index:yes
Website:yes

To

1. The Principal Subordinate Judge (MACT) Cuddalore

2. The Record Keeper V.R. Section High Court, Madras